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22 July 2016

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Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

*Re: Notice of Ex Parte (via ECFS)*  
*WC Docket No. 12-375, Rates for Interstate Inmate Calling Services*

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1206(a)(1), I write to provide notice of my meeting on 20 July 2016 with Stephanie Weiner, Senior Legal Advisor to Chairman Wheeler, Claude Aiken, Legal Advisor to Commissioner Clyburn, Gil M. Strobel, Deputy Chief, Pricing Policy Division, Madeleine V. Findley, Deputy Chief, Wireline Competition Bureau; and with Travis Litman, Senior Legal Advisor to Commissioner Rosenworcel in a second meeting. The subject of both meetings was my Petition for Partial Reconsideration, filed 19 January 2016 in this docket, and the Commission's decision to consider an Order on Reconsideration at its Public Meeting on 4 August 2016.

The Petition for Partial Reconsideration (hereafter, Petition) urged the Federal Communications Commission to modify its Second Report and Order and Third Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, FCC 15-136 (rel. 5 November 2015)(Second Report and Order). Specifically, the Petition sought the prohibition of "site commission" payments, or in the alternative, a strict limitation on such payments through the creation of a modest additive to the prescribed rate caps, which would be designed to reimburse correctional facilities for the presumed, legitimate costs of providing Inmate Calling Services (ICS).

On 14 July 2016, the Commission released a Fact Sheet in conjunction with the FCC's Tentative Agenda for the August Open Meeting. The Fact Sheet seems to suggest that the Commission is contemplating an increase in "proposed rate caps to account for costs facilities incur in offering ICS," but without prohibiting or limiting the payment of site commission payments. Such an approach would increase ICS calling rates previously determined to be "just, reasonable, and fair," without addressing the underlying cause of dysfunction in the ICS market that has resulted in the exploitation of prisoners and their families for decades.

As the Commission has explained, "site commissions 'distort the ICS marketplace' by creating incentives for the facilities to select providers that pay the highest site commissions,

even if those providers do not offer the best service or lowest rates.” *Rates for Interstate Inmate Calling Services*, Second Further Notice of Proposed Rulemaking 29 FCC Rcd 13170, at 13180, para. 21 (2014)(Second Further Notice), cited in the Second Report and Order, at ¶ 122. The Commission predicted “that prohibiting such payments will enable the market to perform properly and encourage selection of ICS providers based on price, technology, and services rather than on the highest site commission payment.” Second Further Notice, at ¶ 21.

Yet, the Commission chose not to prohibit or even limit site commissions in its Second Report and Order. Instead, the Commission expressed the view that the establishment of rate caps and limitations on ancillary service charges would be adequate to constrain the pernicious effects of site commission payments. Second Report and Order, at ¶ 128. But the record developed in response to the Petition and in litigation challenging that Order demonstrate that site commissions continue to be “the primary reason ICS rates are unreasonable, . . . ICS compensation is unfair, and . . . such payments have continued to increase . . .” Second Further Notice, at ¶ 21.

Thus, in light of the record as it has developed, the Commission is right to reconsider its Second Report and Order. But meaningful, lasting reform cannot be achieved without the prohibition or strict limitation of site commission payments. Modifying the Order to designate a discrete, interim facility cost-recovery mechanism at a modest increase in per-minute calling rates (say, \$0.01 to \$0.04 per minute, depending on facility size) can work, but only if all other payments to correctional facilities are prohibited.

Under such an approach, the interim rate would be set pending substantive review of a meaningful data collection process to determine the actual, legitimate expense of providing ICS services. However, all other payments to facilities and correctional authorities, including “site commissions,” in-kind payments, and all forms of the payment of value for the provision of ICS, must be prohibited. See 47 C.F.R. § 64.6000, Definitions, at ¶ (t)(defining “site commission” broadly to include in-kind payments and “any form of monetary payment,” including other kinds of compensation).

There seems to be a growing consensus for such an approach, which would serve the interests of prisoners, their families, correctional authorities, and the ICS industry. It would substantially reduce existing calling rates for prisoners and their families by shifting competition among ICS providers from scheming to provide correctional facilities the largest possible site commission to offering high quality of service at the lowest possible calling rates (which would result in increased minutes of use and higher facility compensation). This approach would establish just, fair, and reasonable calling rates that fairly compensate ICS providers, and it would explicitly provide an adequate cost-recovery mechanism for correctional facilities.



Finally, the adoption by the FCC of such an approach could achieve the kind of meaningful and lasting reform that all parties seek and bring resolution to a decades-long administrative proceeding whose ultimate resolution is otherwise uncertain and remote.

I very much appreciate the FCC's continuing effort to reform the dysfunctional ICS market and the time that dedicated staff members spent to allow me to express these views.

Please let me know if I can provide further information. With all best wishes in the meantime, I am,

Sincerely yours,



Michael S. Hamden

cc (*via* email):

Stephanie Weiner, Senior Legal Advisor to Chairman Wheeler  
Claude Aiken, Legal Advisor to Commissioner Clyburn  
Gil M. Strobel, Deputy Chief, Pricing Policy Division  
Madeleine V. Findley, Deputy Chief, Wireline Competition Bureau  
Travis Litman, Senior Legal Advisor to Commissioner Rosenworcel

